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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Rulemaking to Amend Parts 1, 2, 21, 25)
of the Commission's Rules to Redesignate)
the 27.5-29.5 GHz Frequency Bands, To)
Reallocate the 29.5-30.0 GHz Frequency)
Band, to Establish Rules and Policies for)
Local Multipoint Distribution Service)
and for Fixed Satellite Services)

CC Docket No. 92-297

To: The Commission

OPPOSITION TO JOINT APPLICATION FOR REVIEW

JATO Communications Corp. ("JATO"),¹ pursuant to Section 1.115(d) of the Commission's Rules,² hereby opposes the Joint Application for Review ("Application") filed in the above-captioned proceeding by WebCel Communication, Inc., LBC Communications, Inc. and Zip Communications, Inc. (collectively, "Joint Applicants"). The Joint Applicants seek Commission review of the FCC's September 25, 1997 Public Notice in this docket,³ which they claim set December 10, 1997 as the commencement date for the LMDS auction.⁴ However, as discussed more fully below, the Joint Applicants' Application is procedurally defective and, as such, must be summarily dismissed. Moreover, the Joint Applicants fail to provide sufficient

¹ JATO, a company formed earlier this year, intends to acquire Local Multipoint Distribution Service ("LMDS") licenses and operate broadband wireless telecommunications systems nationally.

² 47 C.F.R. § 1.115(d) (1996).

³ *Auction of Local Multipoint Distribution Service, Public Notice*, Report No. AUC-97-17-A, DA 97-2081 (September 25, 1997) ("September 25 Public Notice").

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justification to show that a delay of the LMDS auction is warranted. Accordingly, their request for a delay must be denied.

DISCUSSION

I. **The Joint Applicant's Application for Review Was Untimely Filed and Must Therefore Be Dismissed**

In their Application, which was filed with the Commission on October 23, 1997, the Joint Applicants request Commission review of the September 25 Public Notice, which, they believe, announced the December 10, 1997, LMDS auction start date.⁵ However, the Joint Applicants are clearly mistaken. In fact, the start date for the LMDS auction was actually announced by the Commission in a Public Notice issued on July 30, 1997.⁶

JATO notes that FCC Rule § 1.115(d) specifically requires that “the application for review and any supplement thereto shall be filed within 30 days from the date of public notice of such action. . . .”⁷ In view of the fact that the July 30 Public Notice announced the LMDS auction commencement date, any party having issue with that date would have had to file an application for review no later than August 29, 1997 in order to comply with the requirements of FCC Rule § 1.115(d). In this case, the Joint Applicants’ request was woefully late. Accordingly,

⁴ Application at 1.

⁵ Application at 1-2.

⁶ See FCC Announces Upcoming Spectrum Auction Schedule, Public Notice, DA-97-1627 at 2 (July 30, 1997) (“July 30 Public Notice”).

⁷ 47 C.F.R. § 1.115(d) (1996) (emphasis added).

the Application is procedurally defective and should be promptly dismissed without consideration.

II. The Joint Applicants Have Failed to Proffer Sufficient Justification to Warrant Delaying the LMDS Auction

Citing the FCC's September 25 Public Notice and the agency's September 12, 1997, decision to eliminate installment payment plans for designated entities in the LMDS auction,⁸ the Joint Applicants request that the Commission push back the start date of the LMDS auction by 60 days.⁹ In particular, the Joint Applicants argue that the proximity of the FCC's September 25 Public Notice and earlier decision to eliminate installment payment plans relative to the scheduled start date of the auction has unduly hindered the ability of designated entities to adjust their financing plans and capital structures in time for the auction.¹⁰

In response to the foregoing, JATO, itself a designated entity, points out that potential LMDS participants have known since July 30, 1997 – not September 25, 1997 as the Joint Applicants repeatedly insist in their Application – of the Commission's plans to commence the LMDS action on December 10, 1997. Moreover, as has been well-documented in this proceeding, any additional delay of this long-awaited auction could seriously jeopardize the opportunities that are currently available to prospective LMDS operators to successfully deploy interactive data, voice and video communications services on a competitive basis. Indeed, given the backdrop of rapidly evolving technologies and innovations and an ever increasing

⁸ Second Order on Reconsideration, FCC 97-323 at ¶ 20 (September 12, 1997).

⁹ Application at 2-3.

¹⁰ Id. at 3-6.

competitive telecommunications landscape, further postponement of the LMDS auction may negatively impact LMDS licensees' ability to compete effectively in the marketplace.

Although JATO understands first hand that the elimination of installment payment plans has required some designated entities to restructure their financing plans and capital requirements, it does not believe that it is worth risking, by further delaying the auction, the introduction of LMDS and the many important and promising opportunities that are likely to follow. JATO submits that the public interest would be better served by proceeding with the auction as is currently scheduled. Accordingly, JATO respectfully urges the Commission to summarily deny the Joint Applicants' request for a delay and proceed as planned with the auction and licensing of spectrum to allow the expeditious implementation of LMDS.

CONCLUSION

For the reasons set forth above, JATO Communications Corp. respectfully urges the Commission to summarily dismiss or deny the Joint Application for Review filed by WebCel Communications, Inc., LBC Communications, Inc. and Zip Communications, Inc., and proceed with its plan to commence the LMDS auction on December 10, 1997.

Respectfully submitted,

JATO COMMUNICATIONS CORP.

By: BE Lora

Title: VICE PRESIDENT

November 6, 1997

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CERTIFICATE OF SERVICE

I, Christine Peyton, do hereby certify on this 6th day of November, 1997, that I have served a copy of the foregoing **OPPOSITION TO JOINT APPLICATION FOR REVIEW** via first class mail, postage prepaid, to the parties below:

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